

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 842 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DR SUMITRABEN A SHAH

Versus

RAJKUMAR SHRI DIVYABHANUSINHJI

Appearance:

MR NS SHETH for Petitioner

MR RC JANI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 14/07/98

ORAL JUDGEMENT

1. This is a revision under Section 115 of the Code of Civil Procedure, against the Judgment and order of the trial Court inter-alia fixing the standard rent of the suit accommodation at Rs.525/- p.m. The tenant has filed this revision under Section 115 C.P.C. only against this portion of the Judgment and decree of the Appellate Court.

2. Despite revision of the list twice none appeared for the revisionist. As such the impugned order was perused and the learned Counsel for the respondent landlord was heard.

3. It is not a case where the standard rent was fixed by the trial Court on a separate application for fixation of standard rent. While deciding the suit for eviction the standard rent was fixed on the plea by the defendant - revisionist. The trial Court passed Decree for eviction and also for recovery of arrears of rent and mesne profits. The standard rent was fixed at Rs.525/- p.m. by the trial Court. This amount of a standard rent was found to be reasonable hence this portion of the decree of the trial Court was confirmed by the Appellate Court.

4. No cross objection was filed by the tenant in Appellate Court. The revision was filed by the landlord vide Civil Revision Application No.327 of 1987, in this Civil Revision Application also no cross objection has been filed. If the tenant revisionist wanted to challenge the portion of the decree of the appellate Court the revision under Section 29(2) of the Bombay Rent Act 1947 should have been filed. The revisional jurisdiction under Section 115 C.P.C. is not to be invoked when alternative remedy was available to the revisionist. As pointed out above two alternative remedies were available to the tenant revisionist; one of filing cross objection in the lower Appellate Court and another by filing cross objection in this revision. Another efficacious remedy was available to the revisionist by filing a separate revision under Section 29(2) of the Rent Act. Since remedies under these provisions were not availed off I do not find it a fit case where decision under Section 115 C.P.C. should be exercised.

5. Even if for a moment such jurisdiction is to be exercised the examination of the two judgments of the two courts below indicate that pure finding of fact on a standard rent has been recorded by the two courts below and such findings does not suffer from any jurisdictional error material irregularity or illegality. Further if such order is allowed to stand it will not cause irreparable loss and hardship to the revisionist nor it will occasion failure of justice to the revisionist. For these reasons also the revision under Section 115 C.P.C. is liable to be dismissed.

6. For the reasons given above the revision is hereby dismissed. No order as to costs.

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